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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,951	11/24/2003	Lawrence C. Don	DON1.DIV	5275

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TROUTMAN SANDERS LLP
BANK OF AMERICA PLAZA, SUITE 5200
600 PEACHTREE STREET , NE
ATLANTA, GA 30308-2216

EXAMINER	
VARNER, STEVE M	

ART UNIT	PAPER NUMBER
3635	

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/720,951	DON ET AL.	
	Examiner	Art Unit	
	Steve M Varner	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 12, of U.S. Patent No. 6651393, Don et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding claim 1, Don et al. '393 claim 1 claims in a construction system for a structure, the structure being formed of manufactured units, an improvement to the construction system comprising: manufactured units that are approximately at least majority-finished at a site distant the building site of the structure, the approximately at least majority-finished manufactured units assembled together to form the structure at the building site; and a floor/ceiling assembly locatable between vertically adjacent units, the floor/ceiling assembly incorporating a sound attenuation member.

Regarding claim 2, Don et al. '393 claim 1 claims the construction system of Claim 1, wherein the floor/ceiling assembly comprises: structural members with top and bottom flanges wherein the sound attenuation member in communication with the bottom flanges; a floor in communication with the top flanges; and a ceiling in communication with either or both of the top flanges and the sound attenuation member.

Regarding claim 3, Don et al. '393 claims 1, 2, claim the construction system of Claim 1 wherein the floor/ceiling assembly comprises: a balcony portion that is open to the environment upon construction of the structure; and an interconnection system enabling the connection of units at the building site, which interconnection assembly does not significantly inhibit the finishing of the units at a site distant the building site of the structure.

Regarding claim 4, Don et al. '393 claim 3 claims the construction system of Claim 3, the interconnection system being a non-welding connection means.

Regarding claim 5, Don et al. '393 claim 12 claims the construction system of Claim 1 further comprising a stabilization assembly erected at the building site, the stabilization assembly providing a stable construction assembly to which the units can be attached during construction of the structure.

Regarding claim 6, Don et al. '393 claims 1, 4, claim in a construction system for a structure, the structure being formed of manufactured units, an improvement to the construction system comprising: manufactured units that are approximately at least majority-finished at a site distant the building site of the structure, the approximately at least majority-finished manufactured units assembled together to form the structure at

the building site; and a load-bearing assembly for a unit, the load-bearing assembly to transfer at least a majority of the loads of the structure, thus freeing the walls of the units from such load transfer, enabling the walls of the units to be approximately at least majority-finished distant from the building site of the structure.

Regarding claim 7, Don et al. '393 claim 5 claims the construction system of Claim 6, the load-bearing assembly comprising: load-bearing members; and connection subassemblies to connect the load-bearing members of two adjacent units.

Regarding claim 8, Don et al. '393 claim 6 claims the construction system of Claim 7, the load-bearing members being at least approximately vertical members and the connection subassemblies connecting the at least approximately vertical members of two vertically adjacent units.

Regarding claim 9, Don et al. '393 claim 7 claims the construction system of Claim 8, the vertical members of the load-bearing assembly being of unitary size.

Regarding claim 10, Don et al. '393 claim 12 claims the construction system of Claim 6 further comprising a stabilization assembly erected at the building site, the stabilization assembly providing a stable construction assembly to which the units can be attached during construction of the structure.

Regarding claim 11, Don et al. '393 claim 8 claims in a construction system for a structure, the structure being formed of manufactured units, an improvement to the construction system comprising: manufactured units that are approximately at least majority-finished at a site distant the building site of the structure, the approximately at least majority-finished manufactured units assembled together to form the structure at

the building site; and a temporary roof assembly to protect the approximately at least majority-finished unit during transit to the building site, the temporary roof assembly removable from the unit prior to completion of the structure.

Regarding claim 12, Don et al. '393 claims 9, 10, claim the construction system of Claim 11, the temporary roof assembly including a lifting assembly by which the unit can be lifted and placed during construction of the structure; the temporary roof assembly maintaining the structural integrity of the unit during the stressful lifting process at the building site, and providing rigidity to the unit during transit in order offset the stresses of racking and shearing during such transport.

Regarding claim 13, Don et al. '393 claims 4, 8, claim the construction system of Claim I1 further comprising a load-bearing assembly for a unit, the load-bearing assembly to transfer at least a majority of the loads of the structure, thus freeing the walls of the units from such load transfer, enabling the walls of the units to be approximately at least majority-finished distant from the building site of the structure; the temporary roof assembly being attached to the load-bearing assembly adding strength and rigidity to the units during transit to the building site.

Regarding claim 14, Don et al. '393 claim 12 claims the construction system of Claim 11 further comprising a stabilization assembly erected at the building site, the stabilization assembly providing a stable construction assembly to which the units can be attached during construction of the structure.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hester, Jr. shows a safer school module and assembly. Yulkowski shows a method and apparatus for constructing multi-rise stacked modules for human occupancy. Mongan shows building framing system for post-tensioned modular building structures. Fenci shows coordinated modular building construction.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SV

Carl D. Friedman
Supervisory Patent Examiner
Group 3600